

Recent Amendments to the *Michigan Employment Security Act*

Made by Act No. 269 of the
Public Acts of 2011, effective
December 19, 2011.

Recent Amendments to the *Michigan Employment Security Act*

Amendments to Payment of Benefits

Amendments to Charging of Employers

For an employer that becomes a contributing employer on or after January 1, 2012, the employer will become fully “experience-rated” in a **4-year period**, rather than the previous 5-year period:

Amendments to Charging of Employers

<u>Year of Liability</u>	<u>Contribution Rate</u>
1	2.7%
2	2.7% + 1/3 CBC
3	2.7% + 2/3 CBC
4+	CBC + ABC + NBC

Amendments to Charging of Employers

For an employer that becomes a contributing employer on or after January 1, 2013, the employer will become fully “experience-rated” in a **3-year period**, rather than the previous 5-year period:

Amendments to Charging of Employers

Year of Liability

1

2

3+

Contribution Rate

2.7% + 1/3 CBC

2.7% + 2/3 CBC

CBC + ABC + NBC

Amendments to Charging of Employers

Beginning with the 2012 tax year, the Chargeable Benefits Component (CBC) will be calculated based on benefit charges and tax payments for the previous **48 months (4 years)**, ending the preceding June 30, rather than the previous 60 months (5 years).

Amendments to Charging of Employers

Beginning with the 2013 tax year, the Chargeable Benefits Component (CBC) will be calculated based on benefit charges and tax payments for the previous 36 **months (3 years)**, ending the preceding June 30, rather than the previous 60 months (5 years).

Amendments to Charging of Employers

An employer that resumes business after **3** years of inactivity will be assigned the “new employer” rate of 2.7%; previously, the new employer rate would be assigned after 2 years of inactivity.

Amendments to Charging of Employers

If an employer again becomes liable for the payment of unemployment benefits within 6 years of having ceased being liable, both any positive **and any negative** balance will be restored to the employer's account and used in the experience rate computation.

Amendments to Charging of Employers

A “successor” employer will receive listings of benefit charges to the account of the “predecessor” employer (because those are charges that will be used in the future to calculate the successor employer’s experience rates).

Amendments to Charging of Employers

The Taxable Wage Base (against which the tax rate is multiplied for each covered employee) will increase to **\$9,500** until the Unemployment Trust Fund reaches \$2.5 Billion, and will then revert to the previous \$9,000.

Amendments to Charging of Employers

If an employer continues to employ a worker who qualifies for benefits based, in part, on work with that employer, and if the gross weekly wage the employer pays the worker equals or exceeds the employer's weekly benefit charge for the worker, the employer can notify the UIA **once** of that fact, and the employer will be relieved of all benefit charges for that worker for the remainder of that claim. Previously, weekly notice was required from the employer.

Amendments to Charging of Employers

To be considered a “seasonal employer” it will no longer be necessary for the employer to be part of an industry that is also seasonal. An employer must merely show that it operates during regularly recurring periods of 26 weeks or less within any 52-week period. However, as before, employers in the construction industry cannot receive “seasonal employer” designation.

Amendments to Charging of Employers

Beginning in 2013, if an employer employs 25 or fewer employees, and incurred 50% or more of its tax liability the previous year in the first calendar quarter, then the employer can spread out its tax liability in the current tax year over all 4 quarters, without incurring interest charges. The deferred payments must be paid on time in accordance with the deferral schedule.

Amendments to Charging of Employers

If an employer is liable solely as an employer of domestic employees, the tax may be paid **annually**, rather than quarterly, although quarterly tax reports must still be filed.

Amendments to Charging of Employers

If benefits are paid to a worker solely on the basis of combining wages for work in Michigan and another state(s), the account of the Michigan employer will not be charged for those benefits.

Amendments to Charging of Employers

If benefits are paid to a worker based on the provision of existing law that allows payment if a worker leaves unsuitable work within 60 days of beginning that work, the benefits will no longer be charged to the account of the employer the worker left.

Amendments to Charging of Employers

When a worker quits (“voluntarily leaves”) work, but thereafter earns enough to satisfy the earnings “rework” requirement to requalify for benefits, no adjudication is made of the quit. Under the amendment, it will be **presumed** that the quit was disqualifying and the employer’s account will **automatically** be “non-charged” for the benefits without the need for the employer to request a *Redetermination of Charges*.

Amendments to Charging of Employers

- Beginning with the 2014 tax year, employers with more than 5 employees will be required to file quarterly reports **on-line**, no longer on paper.
- Beginning with the 2015 tax year, employers with 5 or fewer employees will be required to file quarterly reports **on-line**, but can request a limited extension upon a showing of economic hardship.

Amendments to Charging of Employers

Beginning with the 2013 tax year, the quarterly wage report will be combined with the quarterly tax report, and only one quarterly report will be required.

Amendments to Charging of Employers

The penalty for filing a late, incomplete or erroneous wage report is increased:

- To **\$50** (from \$25) if filed within 30 days of the due date.
- To **\$250** per quarter for **each** additional full quarter the report is late.

However, if the Agency notifies the employer of an error and the employer supplies a correction within 14 days, no penalty applies.

Amendments to Charging of Employers

The penalties for willfully violating or intentionally failing to comply with a provision of the law, or for knowingly making a false statement or failing to disclose material information, are extended to **owners and directors** of companies.

Amendments to Charging of Employers

- Until January 1, 2013, an employer may request a *Determination* by the UIA as to whether services it receives from an individual should be regarded as employment by an “employee” or whether the individual is properly classified as an “independent contractor.”
- If the services should have been considered employment, the employer will only be charged for benefits paid based on those services beginning the date of the *Determination*, and no penalties or interest will apply.

Amendments to Charging of Employers

Beginning January 1, 2013, the UIA will begin using the **20-factor IRS test** to determine “independent contractor” vs employee status of a worker, rather than the “economic reality” test.

Administrative Amendments

In addition to the amendments made as to the payment of unemployment benefits and the charging of an employer's account, certain other administrative changes were made in the law that will affect both claimants and employers.

Administrative Amendments

The UIA may store documents electronically, rather than in paper form, and will keep them for at least as long as the paper documents were required to be kept.

Administrative Amendments

Confidential information can be shared with:

- Police agencies pursuing criminal investigations, and
- Third-party contractors providing housing on behalf of a state or local public housing authority.

Administrative Amendments

A lien to collect restitution or taxes can be placed on a claimant's or employer's bank account, and a lien on real property can be placed through the Secretary of State.

Administrative Amendments

- References to “Referee” are changed to **“Administrative Law Judge.”**
- References to “Commission” are changed to **“Unemployment Agency.”**
- References to “Board of Review” are changed to **“Michigan Compensation Appellate Commission.”**

Administrative Amendments

- A protest must now be signed, or it can be verified in a manner described in an Administrative Rule. An appeal must still be signed, or it can be verified by the Agency.
- An unsigned or otherwise unverified protest or appeal will not be accepted as a protest or appeal, but the Agency will notify the party of that fact and allow them to submit a signed or verified protest or appeal.

Administrative Amendments

An ALJ may consolidate separate cases that involve the same, or substantially similar, evidence or issues, and hold a single hearing for the taking of testimony and other evidence as to all the cases.

Administrative Amendments

The Michigan Compensation Appellate Commission (MCAC) may accept an application for a written argument if a request for an oral hearing is not granted and if the request for written argument is **approved by 2 or more members** assigned to review the appeal.

Administrative Amendments

- A transcript of a hearing before an Administrative Law Judge will only be prepared if requested by a majority of the members of the panel of the MCAC reviewing the matter.
- Parties may request preparation of a transcript, but must pay the cost of producing it.